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OMBUDSMAN SERVICES IN MINNESOTA

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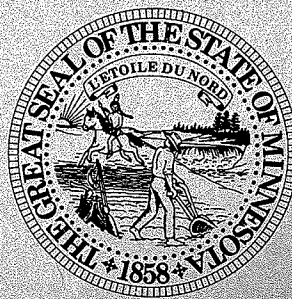


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Making Government Responsive to Citizens

“NOW MORE THAN EVER ...”

A COMPREHENSIVE OVERVIEW WITH
RECOMMENDATIONS FOR EFFICIENT
OMBUDSMAN SERVICES



A PUBLIC REPORT
PREPARED BY THE
OMBUDSMAN ROUNDTABLE
DECEMBER 1995

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**"In this period of uncertainty ...
calls to Ombudsmen will increase as
people try to understand all the
change going on in government."**

Timothy J. Penny

**Former Minnesota 1st District Congressman
Keynote Address at the
1995 United States Ombudsman Association National Conference**

PREFACE

As a result of participation in the Roundtable and the retreat, the ombudsmen recognize that there are individual differences in how Ombudsmen in Minnesota were formed and how they are organized and operate. Those differences were established based on the unique needs of the populations served. However, there are strong threads of commonality among the various ombudsman.

The purpose of this report is to provide:

- Education on the role of an Ombudsman.
- A suggested definition of an Ombudsman for Minnesota Statute.
- Consistency and guidance for creation of future Ombudsman.

Nothing in this report is designed to force an existing Ombudsman to change their current structure or operation in a way that would not be beneficial to the citizens they serve. Rather, the intent is to clarify as well as to encourage and direct cooperation for efficient and effective use of state resource.

SPECIAL NOTE

After participation in the Roundtable and the retreat, as well as reviewing the research material from the various sources and the report itself, the Department of Human Services Prepaid Health Care Program participants, have determined that the Ombudsman for Minnesota Prepaid Health Care Programs, is not consistent with the role and responsibility of an Ombudsman and has specifically requested to be removed from this report.

Special note is made of this because under Minn. Stat. § 256B.031 Subd. 6, the statute specifically uses the word Ombudsman.

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EXECUTIVE SUMMARY

Every citizen of Minnesota is entitled to be treated fairly and respectfully. Citizens are not prepared to let government dominate their lives and ignore their interests. People who have complaints about how they have been treated by a government agency or government regulated service are often angry, confused and isolated. Many people who complain to Minnesota's various Ombudsman Offices, find themselves in situations that marginalize and disenfranchise them because of poverty, illness, disability, institutionalization, incarceration, culture, victimization or their youth.

The Ombudsman system is one of the institutions essential to a society under the Rule of Law and a society in which fundamental rights and human dignities are respected. Human rights are protected by the availability of remedies. The Ombudsman system is one of the remedies which seeks to preserve human rights. All of the Ombudsman offices are *responding to a common phenomenon-the potential in all bureaucracies for insensitivity towards individuals*. Delay, indifference, rudeness, negligence, arbitrariness, oppressive behavior, arrogance and unlawfulness can be structural shortcomings of all hierarchical institutions. *Fundamental to the Ombudsman concept is the ability to invert bureaucratic attention towards the individual citizens who are intended to be served.*

For the past three legislative sessions, discussions and proposals to change the structure of the Ombudsman services in the Minnesota have been advanced. These proposals range from increasing or decreasing powers and duties, restructuring agencies in the name of governmental efficiency and reform, privatizing of services, preventing duplication of services, and being more citizen/consumer friendly.

Each proposal, despite good intention, met opposition from the various citizen's groups represented by ombudsman services. After discussion with those proposing or considering changes, it became clear that ombudsmanship is misunderstood on many levels. Misunderstandings included:

- an inadequate understanding of the role and function of an ombudsman;
- an inadequate awareness of the various state ombudsman in Minnesota; including the clientele they serve, reason for their establishment, funding and uniqueness of service they provide to designated clients;
- an inadequate method to get information about ombudsman services;
- and an inadequate understanding of what these proposed changes would mean to stakeholders

Ultimately, because no proposal was comprehensive enough to address all of the concerns, each proposal was dropped.

In 1994, the various ombudsmen in Minnesota formed an informal group referred to as The Roundtable. The purpose of the group is to share ideas, cooperate in a number of areas to prevent duplication of effort and to discuss the pro and cons of various issues affecting ombudsmen, to ensure that all relevant facts are considered.

In responding to requests for information during the legislative session, ombudsmen were forced to divert time away from their primary function-to serve the citizens of Minnesota. The Ombudsman Roundtable undertook a comprehensive review of state Ombudsman services, including who they serve and how they are served. The purpose of this review was to attempt to address the concerns raised over the past three years, in a way that did not detract from services to citizens.

In June 1995, members of the roundtable participated in a retreat. The group identified the need for a facilitator to assist in the process to ensure that the overall goals were the focus, and not the protection of the status quo. The selected facilitator was the standing president of the United States Ombudsman Association, who brought with him a knowledge and understanding of the ombudsman concept.

The retreat participants identified concerns that had been raised in the various discussions and proposals and then discussed them thoroughly. The concerns were then separated and ranked by their perceived importance. The group also discussed historical attempts at change. From there they moved into brainstorming of new ideas followed by an evaluation of the various ideas and their pros and cons. Consensus was achieved as to the which options should be investigated further. Of the two options warranting further review, one would require legislative changes and the other would not.

After extensive review and discussion, consensus was achieved on the following items:

- many of the concerns raised have merit and opportunities exist for clarification, education and improvement of ombudsman services;
- there are significant benefits to the way Minnesota has developed and organized ombudsman services to date; and
- in striving to improve the system, we cannot lose those services that have made the ombudsmen an important resource for citizens.

As a result of the retreat, Roundtable members are proposing that the Legislature enact legislation that would accomplish the following:

Purpose:

Make the ombudsman services in Minnesota more efficient and cost effective as well as more citizen/consumer friendly by clarifying definitions, powers and duties and by permitting the ombudsman to cooperate, share and streamline certain administrative services and equipment to prevent duplication.

Goals:

1. To preserve the legislative intent behind the original creation of the various ombudsman programs in Minnesota.
2. To accomplish any changes without a loss of service or identity of the unique populations who fought to secure ombudsman's services for citizens who have historically lacked power or visibility in government or who have traditionally been disenfranchised.
3. To allow for the anticipated rapid increase in demands for ombudsman's services with minimal (if any) impact on the state budget.

Proposed Legislation:

Create a chapter of Minnesota Statute (15B), Offices of Ombudsmen in General, to provide for a statutory definition of an ombudsman, allow for a clear understanding of the powers and duties of an ombudsman and to clearly identify which services are available to citizens in one place in statute. The suggested legislation would contain the following:

- definition of an ombudsman;
- generic language applicable to all ombudsman;
- a list of powers and duties that would apply to ombudsman programs which would be consistent with the historical purpose of an ombudsman;
- permissive language to allow for sharing and streamlining of administrative resources and equipment-examples may include:
 - a.) recognition the existing roundtable for the purpose of addressing common needs including training, policy development, common brochure listing all ombudsman services in Minnesota, a common report to the legislative and executive branch;
 - b.) directing the ombudsman to do other related citizen/user friendly and efficient services includ-

ing the possibility of a common 800 number and better positioning of directory listings;

- references to current ombudsmen programs available to citizens, as well as providing a place to reference future ombudsman programs that may be created;
- directions to the Revisor to amend current statutes for the individual offices by adding a reference to the common chapter.

Vision:

The proposed chapter would recognize the following important concepts from existing ombudsman statutes:

- retention of specific statutory autonomy of each office;
- the specialization of services provided by specific ombudsmen which is considered to be the strongest feature of the current programs;
- allows for different appointing authorities consistent with the needs of the communities served;
- allows for oversight, policy review and funding needs by those topic specific legislative committees who know the most about a particular ombudsman service.

The members of the Ombudsman Roundtable are committed to providing Minnesota citizens with cost effective, user/citizen friendly services.

These are critical times. When Government agencies are expected to do more with less and employees must make decisions under pressure, the potential for error rises. Everyone becomes more vulnerable and no agency of government or government regulated system is exempt from the pressures and fiscal restraints. It is for this very reason that ombudsman services are needed now more than ever.

ACKNOWLEDGMENTS

This report was prepared by the Ombudsman Roundtable to provide background and education in the area of Ombudsman Services in Minnesota. A special thank you to each of the Ombudsman and their respective agencies and staff for the time and effort that went into this report.

Participating Members of the Roundtable

Ombudsman for Mental Health and Mental Retardation

Roberta C. Opheim - Roundtable Chair

Ombudsman for Corrections

Patricia Seleen - Roundtable Vice-Chair

Ombudsman for Crime Victims

Laura Goodman-Brown

Ombudsman for Older Minnesotans

Sharon Zoesch

Small Business Ombudsman

Laurel Mezner

Former Taxpayers Rights Advocate

Jill Ruzika

Ombudspersons for Families

Ann Hill, African American Families
Moa Yang, Asian Pacific Families
Patricia Ray, Spanish Speaking Families
Jan Lindstrom, Indian Families

Ombudsman for Minnesota Prepaid Health Care Programs*

Ginny Prasek
Mary Wielinski

*(After participation in the Roundtable and the retreat, as well as reviewing the research material from the various sources and the report itself, the Department of Human Services Prepaid Health Care Program participants, have determined that the Ombudsman for Minnesota Prepaid Health Care Programs, is not constant with role and responsibility of an Ombudsman and has specifically requested to be removed from this report. Special note is made of this because under Minn. Stat. § 256B.031 Sub. 6, the statute specifically uses the word Ombudsman.)

Special appreciation to Dean Gotterher, President of the United States Ombudsman Association, who facilitated the Minnesota Ombudsman Roundtable retreat; Sarah Docken, who provided some of the artwork; and the Ombudsman for Mental Health and Mental Retardation and her staff for their efforts at writing and preparing this report.

ROUNDTABLE REPORT

DEFINITION

The Ombudsman is an independent governmental official who receives complaints against government (and government regulated) agencies and/or its officials from aggrieved persons, who investigates, and who if the complaints are justified, makes recommendations to remedy the complaints. (American Bar Association)

HISTORICAL INFORMATION

The word comes from the old Swedish umbud, meaning proxy, or power to act for another. The office was started in Sweden in 1809, and has been adopted in varying forms by other Scandinavian countries. It has aroused world-wide interest as the complexity of government administration grows. The crucial point in the ombudsman's powers is the *right to look into unreasonable, unfair, oppressive, or unnecessarily discriminatory acts by government officials even though in accordance with the law.*

A key to the ombudsman's effectiveness is accessibility to the public. Any one may file a complaint

by making a telephone call or writing a letter. This is especially important to those deprived of their freedom in jails, hospitals, etc.²

The concept of the Ombudsman has taken firm hold as an instrument of democratic accountability between the individual and the administrative state.

THE OMBUDSMAN CONCEPT

The inherent worth and dignity of each person defines our humanity. It creates for every citizen the fundamental right to be treated fairly and to be respected as an individual with unique needs, interests, perspectives and circumstances.

The reality of modern administrative bureaucracy and its massive impact on individuals transcends all forms of government. Beyond

Ombudsman

An official intermediary between citizen and government to counteract the delay, injustice, and impersonality of bureaucracy.

Safire's Political Dictionary

the most simple and direct forms of democracy, considerable power must be entrusted to government officials in order for them to carry out the public purpose. The need for protection for the ordinary citizen against the possible abuse of this delegated power has been recognized for many centuries.

All of the Ombudsman offices are *responding to a common phenomenon-the potential in all bureaucracies for insensitivity towards individuals.*³ Delay, indifference, rudeness, negligence, arbitrariness, oppressive behavior, arrogance and unlawfulness can be structural shortcomings of all hierarchical institutions in which employees receive their directions, authority and rewards from above. *Fundamental to the Ombudsman concept is the ability to invert bureaucratic attention towards the individual citizens who are intended to be served.*⁴

But in order to continue to achieve its potential, the ombudsman process must be as flexible in its approaches as it is firm in its principles.⁵

An Ombudsman generally holds the power merely to recommend, not to order change. It may be that this inability to force change represents the central strength of the office and not its weakness. Persuasion can be a far more effective tool for change than command, because persuasion depends on dialogue and a reasoned response. It is the exchange of ideas rather than the imposition of ideas that lends strength to democracy, and the same principle applies to ombudsmanship.⁶

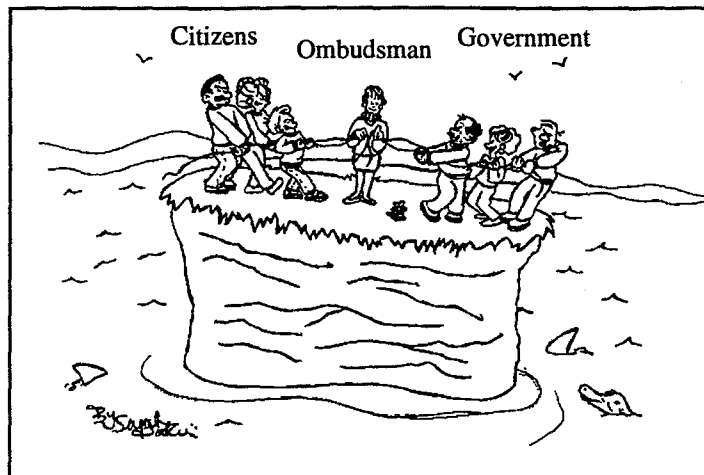
The Ombudsman system is one of the institutions essential to a society under the Rule of Law and a society in which fundamental rights and human dignities are respected. Human rights are not protected simply by constitutions or legislation, by

guarantees or speeches, by proclamations or declarations, but primarily by the availability of remedies. The Ombudsman system is one of the remedies which seeks to preserve human rights.

The Ombudsman's method of handling complaints against administrative decisions is -unlike that of the courts- direct, informal, speedy and inexpensive. An important feature of the ombudsman system is that, because of the simple and inexpensive

way in which complaints are handled, many minor complaints can be addressed. Though important to the claimant, they would not have been worth the cost of an elaborate court procedure.

Many cases involve no more than explaining to citizens, the reasons for the decision of which they complained, and advising the government office in question that in the future it should give adequate reasons for its decisions.



MINNESOTA CONCEPT

In the late 1960's, Senator Robert Brown proposed legislation for the creation of a single ombudsman for handling citizen complaints against state government. That legislation did not pass. However in 1973, in response to unrest and reform in prisons around the country, Minnesota established the Office of Ombudsman for Corrections. In the

1980's, the Office of Ombudsman for Older Minnesotan, the Office of Crime Victim's Ombudsman, the Ombudsman for Minnesota Prepaid Health Care Programs followed. As a result of the Adult Mental Health Act and the Federal Court Welsh Consent Decree, the Office of Ombudsman for Mental Health and Mental Retardation was created in 1987. In 1991, because of the high out of home placement for children in the communities of color, the Office of Ombudspersons for Families was created to monitor these issues. In 1992, as a result of the Federal Clean Air Act, the Small Business Ombudsman was created.

training. In the long run, this reduces the amount of research that must be done on each case. This has proven to be both effective and efficient.

**OMBUDSMEN IN THE
STATE OF MINNESOTA**

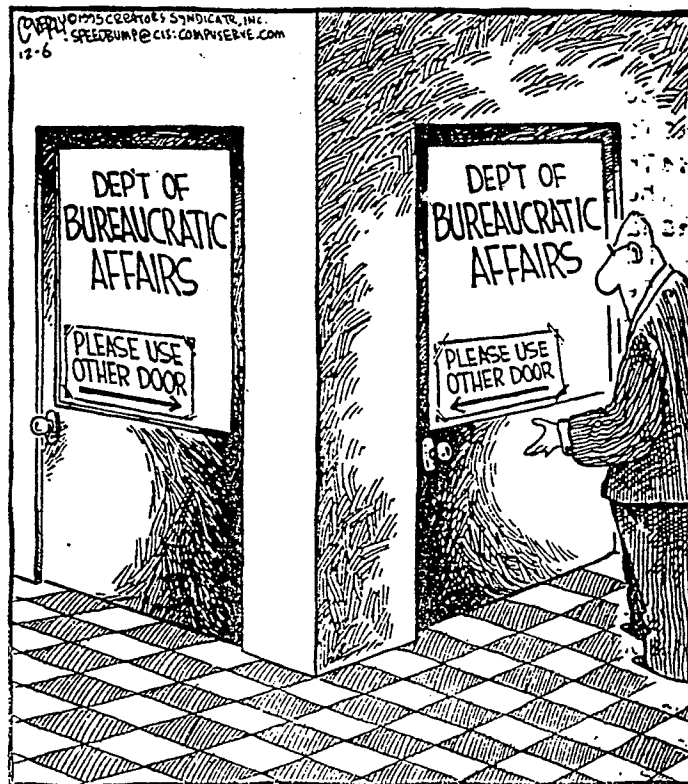
The various programs in Minnesota were established either as independent agencies or as part of other agencies depending on what was best suited for the population being served at the time the office was created.

Office of Ombudsman for Corrections

Minn. Stat. § 241.41-.45 (Established 1973)

In Minnesota, we have reserved the services of an ombudsman for those citizens who are incarcerated, institutionalized, isolated, vulnerable, disenfranchised, victimized by crime, and discriminated against. This is especially true for citizens in nursing homes, psychiatric hospitals and programs, prisons as well as the impoverished, criminally victimized and culturally deprived. Minnesota has empowered statutorily, the various ombudsman to oversee specific government agencies. This allows for persons who are professionals in a given field to investigate those agencies for which they have some knowledge and

Speed Bump By Dave Coverly



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The Ombudsman for Corrections provides information and independent investigations into complaints regarding the Minnesota Department of Corrections. The Ombudsman receives complaints from inmates, family, staff and the public.

The Ombudsman's jurisdiction includes the 10 adult and juvenile state correctional facilities, regional corrections or detention facilities and

those programs or facilities operating under Chapter 401, the Community Corrections Act. **An Independent State Agency.**

Office of Ombudsman for Crime Victims (OCVO)

Minn. Stat. §611A.72-.74 (Established 1986)

The role of the OCVO is to impartially investigate complaints of allegations of victim rights violations or mistreatment that crime victims or witnesses have against any person or agency of the criminal justice system. The OCVO also provides a 24 hour toll free number that can be accessed by crime victims/witnesses or criminal justice professionals in need of information or referral. **Located in the Department of Public Safety.**

Office of the Ombudsman for Older Minnesotans

Minn. Stat. § 256.974-.9744 (Established 1987)
Public Law 102-375 Older Americans act, 1992
Reauthorization

This office provides information, advocacy, and complaint resolution services for people seeking or receiving homecare or nursing home services and for Medicare beneficiaries with problems accessing health care or premature hospital discharge. **Located within the Board on Aging within the Department of Human Services.**

Office of Ombudsman for Mental Health and Mental Retardation

Minn. Stat. §245.91-.97 (Established 1987)

Established to promote the highest attainable standards of treatment for persons receiving services for mental illness, mental retardation and related conditions, chemical dependency and emotional disturbance. The office receives and investigates complaints, provides advocacy and mediation on behalf of individual clients, conducts death and serious injury reviews and makes recommenda-

tions for improvement of mental disabilities service delivery systems. **An Independent State Agency.**

Taxpayer Rights Advocate

Minn. Stat. § 270.273 (Established 1990)

Represents the interests of taxpayers who have grievances against the Department of Revenue in connection with an auditor collection activity.

Located within the Department of Revenue

Agriculture Ombudsman

Minn. Stat. § 17.95 (Established 1990)

Receive and investigate complaints from persons affected by the Department of Agriculture.

Located within the Department of Agriculture

Office of Ombudsperson for Families

Minn. Stat. § 257.0755-.0762 (Established 1991)

Purpose: Monitor agency compliance with all laws governing child protection and placement, as they impact children of color. Ensures that court officials, public policy makers, and service providers are trained in cultural diversity. Provides experts from the appropriate community of color including tribal advocates are used as court advocates and are consulted in placement decisions that involved children of color. Ensures that Guardians Ad Litem and other individuals from communities of color are recruited, trained, and used in court proceedings to advocate on behalf of children of color. The Office of Ombudspersons for Families was created to ensure that children of color and their families are guaranteed fair treatment by all agencies that provide children protection services. **An Independent State Agency.**

Small Business Ombudsman

Minn. Stat. § 116.98 (Established 1993)

This office works closely with the MPCA's Small Business Assistance Program to help small businesses understand environmental regulations. In this effort, the Ombudsman focuses on outreach, education, and open dialogue with the regulated small business community. The Ombudsman will also investigate and assist in the resolution of complaints and disputes and will provide confidential help on individual source problems and grievances.

Located within the Pollution Control Agency.

OMBUDSMAN RETREAT

In the past, discussions and proposals to change the structure of the ombudsman services in the Minnesota have been advanced. These proposals range from increasing or decreasing powers and duties, restructuring agencies in the name of governmental efficiency and reform, privatizing of services, preventing duplication of services, and being more citizen/consumer friendly.

Each proposal, despite good intention, met opposition from the various citizen's groups represented by ombudsman services. After discussion with those proposing or considering changes, it became clear that ombudsmanship is misunderstood on many levels.

Misunderstandings included:

- an inadequate understanding of the role and function of an ombudsman;
- an inadequate awareness of the various state ombudsman in Minnesota; including the cli-

entele they serve, reason for their establishment, funding and uniqueness of service they provide to designated clients;

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Ultimately, because no proposal was comprehensive enough to address all of the concerns, each proposal was dropped.

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In responding to requests for information during the legislative session, ombudsmen were forced to divert time away from their primary function-to serve the citizens of Minnesota. In response, the Ombudsman Roundtable undertook a comprehensive review of state Ombudsman services, including who they serve and how they are served. The purpose of this review was to attempt to address the concerns raised over the past three years, in a way that did not detract from services to citizens.

Members of the roundtable participated in a retreat. The group identified the need for a facilitator to assist in the process to ensure that the overall goals were the focus, and not the protection of the status quo. The selected facilitator was the standing president of the United States Ombudsman Association, who brought with him a knowl-

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Purpose of the suggested legislation:

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3. To allow for the anticipated rapid increase in demands for ombudsman's services with minimal (if any) impact on the state budget.

REVIEW OF EXPRESSED CONCERNS

The retreat participants identified concerns that had been raised in the various discussions and proposals and then discussed them thoroughly. The concerns were then separated and ranked by their perceived importance.

They are listed in the order discussed:

- *Duplication of services:* Although not consistent with the experience of the ombudsmen, there is a perception that the different ombudsmen may duplicate services and constituents.
- *Lack of understanding:* Some members of the public and the legislature do not know who the ombudsmen are, their duties and how they are similar and/or different.

- *Reorganization of government:* Some wish to change the various ombudsman's offices because of the general need to reorganize government and not because of a specific need to reorganize the ombudsmen offices.
- *Functions, powers and authorities:* Among the different ombudsman offices, the functions, powers and authorities differ. The legitimate differences need to be understood by legislators and those that are not legitimate need to be corrected.
- *Conflicts of interest:* These conflicts result when ombudsmen investigate the people who appoint them, are housed in the same buildings or who are not considered independent from those they investigate.
- *Inequities among ombudsman offices:* Funding, resources, powers, etc., among the different offices vary, creating inequities. Different offices have different resources and different powers when they receive or investigate complaints. The reasons for this need to be understood and if not appropriate based on the populations served, then corrected.
- *Administrative efficiencies:* While it has not been demonstrated, some observers believe administrative efficiencies could be achieved by combining or facilitating the combination of administrative services for ombudsman.
- *Service differences:* People do not understand the separate jurisdictions of ombudsman and that each ombudsman does not accept complaints about any administrative act of any state government agency but only from those areas as described in their legislation.
- *Enough ombudsman:* Some observers may believe there are enough ombudsman and no more are needed. This may be the result of increased numbers of ombudsman rather than an assessment of their functions.
- *Inefficiencies in government:* Some citizens are fed up with government and wish to do something based on their dissatisfaction. They seek reforms such as "one-stop shopping" to make government more efficient.
- *Structural policy concerns:* Some legislators are concerned about the structure of ombudsman offices; where they are located, who they can investigate, and the different powers of each office.
- *Proper role:* Some observers question whether it is a proper role of the ombudsman to advise citizens of their right to sue state government. While the main role of the ombudsman is to resolve disputes and complaints in an informal manner, some citizens may only be able to obtain justice through civil court action. That decision rests with the citizen and not with the ombudsman. In some ombudsmen legislation, the work of the ombudsman may not be brought into court action. What can not be measured are the number of legal actions that have been prevented through the efforts of the ombudsmen.
- *Service justification:* The service some ombudsmen offices offer has not been clearly justified in the minds of various legislators. For

example, some wonder why the state should provide ombudsman services to inmates. Is it justified to spend money on a program and an ombudsman for the same program? These observers question whether the program shouldn't be done so well that an ombudsman is not needed, especially when resources are scarce. While theoretically this should be true, the services are provided by humans who can and sometimes do make mistakes or interpret rules in a way that was not intended nor is favorable to the citizen. The ombudsmen serve as part of a quality control system for the state, providing checks and balances to bureaucracies.

- *Common definition of ombudsman:* Should all ombudsman offices be governed by the same language and have the same powers? Some observers believe that should be the case. New ombudsman should have the same powers as already existing offices. Offices that do similar kinds of work should be coordinating their efforts.
- *Community concerns:* Some legislators and other observers may not understand community concerns that helped create some of the ombudsman offices. These communities may include communities of color, of mental disabilities, of small businesses, of taxpayers, of the criminal justice system and of older Minnesotans. This has a potential political impact if the offices are going to be changed by legislation.
- *Legislative institutional memory:* When an ombudsman office successfully eliminates or

solves problems, the legislative institutional memory may not remember what the situation was like before the office was created. The ombudsman is an insurance policy so that these problems do not recur.

- *Equity among ombudsmen:* Achieving equity should not reduce services to any group.
- *Access and publicity:* Should the various ombudsmen offices have the same access to all private and confidential information needed to execute their functions? Should they have the same ability to publicize the results of investigations?
- *Accountability:* To whom are ombudsman accountable? Who watches the watchdogs? While some ombudsmen offices do not appear to have a direct line of accountability, they actually have a delicate web of controls that keep them from abusing the powers of the office. They must first be responsive to the citizen groups they represent. If they are not satisfied, the legislature may hold them accountable through the legislative and funding process. And in all cases there is a process to remove an ombudsman who demonstrates just cause for removal.
- *Legal and financial counsel:* Should ombudsman have the same legal counsel as the state and/or agency especially those agencies that it might investigate? Does the attorney general's Code of Ethics prevent this? Should they have the same finance officer as those they investigate? Or should all ombudsmen have the same legal counsel and financial counsel as each

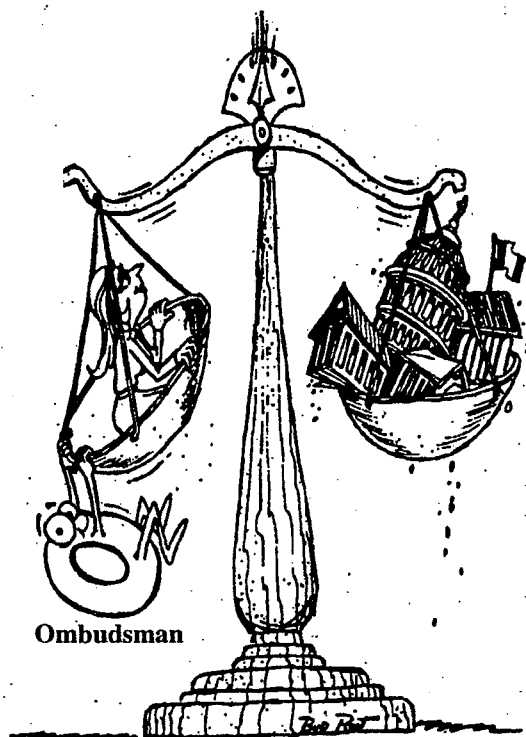
other? Is the answer the same for both subjects?

ANALYSIS OF CONCERNS

The ombudsmen attending were asked to rank the various concerns to reflect what they felt most reflected the concern of the legislative and executive branches of government. These were then grouped into two tiers:

First Tier

- Lack of understanding of ombudsmen roles and responsibilities
- Administrative efficiencies
- Inequities among ombudsman offices
- Service justification
- Accountability
- Conflict of interests



Second Tier

- Belief that ombudsmen duplicate and/or overlap services.
- Differing functions, powers, authorities of ombudsmen.
- Equity among ombudsmen should not reduce services.
- Lack of knowledge by lawmakers about the specific citizen and/or community concerns.
- One-stop government shopping to re-invent or re-engineer government.

EFFORTS AT CHANGE

Historical efforts at change were discussed including the 1994 Core Proposal, 1995 public advocate legislation, and the Governor's 1995 block grant proposal in the budget. None of these were successful but were looked at for any benefits that could be derived from them.

BRAINSTORMING NEW IDEAS

The retreat focused on a no holds-barred brainstorming session to look at the various changes that could be made and perhaps improve the way ombudsman services are described and delivered in Minnesota. The changes are listed in the order in which participants suggested them:

Create an ombudsman administrative chapter. Use Minnesota Statutes Chapter 15 as a model. This chapter would:

- Create generic ombudsman rules, uniform powers, and sanction the Roundtable. Specific provisions establishing and governing each office would be in different sections of the chapter.
- Phase in co-location of ombudsman offices as appropriate.
- Make possible a common brochure describing all ombudsman services.
- Allow a shared 800 number.
- Provide for sharing staff and/or administrative services.
- Provide for shared services agreements among the various ombudsman offices.

The chapter would need to provide a definition for an ombudsman.

Establish ways to share personnel and other resources:

- One or more attorneys at the attorney general's office to represent all ombudsman offices.
- Common support services, personnel, benefits, purchasing, clerical support, EEOC support, regional offices, staff training, computer training.

Functional changes: Completely restructure ombudsman offices in statute, improve the powers and authorities of ombudsman, remove any conflicts of interest when ombudsman investigate those who appoint them.

One ombudsman: Create a single ombudsman to manage all ombudsman offices with deputy ombudsman for each office.

Many ombudsman offices: Maintain the individual ombudsman offices that currently exist and allow

others to be created.

Executive Branch ombudsman: Locate the ombudsman offices in the executive branch, as is currently the case.

Legislative ombudsman: Locate ombudsman offices in the legislative branch and make them employees of the legislature.

Changes designed to save money which may or may not require legislation:

- One ombudsman.
- Shared resources: copying, attorney, conference room, common fiscal agent.
- Co-locate offices: As leases expire, ombudsman would agree to collocate their offices. This would not necessarily require legislation.
- Efficiency: provide better service at no additional costs.
- Regional sharing: Deliver ombudsman services to all Minnesotans efficiently.

Shared services agreements: Share services now on an ad hoc basis using shared services agreements to achieve efficiencies.

Block grants/privatization: Award block grants for ombudsman services to private agencies. This would require granting the ombudsman powers of subpoena, immunities for official good faith acts and against production of records and testimony, to those private organizations and individuals who would not be governed by the same checks and balances that exist on government ombudsmen. Would this then set a precedent by providing such things as subpoena powers to a non-governmental entity?

Status quo: Actively advocate for no change in legislation or office structure.

Do nothing: Let the Legislature decide what changes, if any, will be made to the various ombudsmen offices by offering no plan.

Expand ombudsman services into areas where none currently exists. Create an ombudsman's office(s) that receives complaints that no other office is currently authorized to investigate.

Abolish all ombudsman offices: State government functions well as is. No need exists for ombudsman.

Hire Management Analysis Division: to develop a plan.

Transfer funds to strengthen ombudsmen services, from places where government is currently duplicating service or is ineffective.

Generate revenues: Bill agencies for services ombudsmen provide.

Common intake: Establish some method of common intake that funnels complaints to one phone number where they are parceled out to the ombudsman who has jurisdiction over the agency complained about.

Volunteers: Develop a pool of volunteers to assist in intake and the administration of services. Share volunteers among ombudsman offices.

Interns: Develop a student intern pool. Share interns among ombudsman offices.

Pool professional investigators: Share the investigators each office has during slower periods and to use the skills of Roundtable individuals and investigators to deliver services better to citizens.

Share outreach: Make the various ombudsman offices more accessible to all Minnesotans.

Consistency: Create consistent approaches to investigative procedures, report writing, recommendations, brochures, directories, common forms.

Joint biennial report: Issue a joint biennial report, instead of separate as is the case now.

Common fiscal agent: Have one common fiscal agent to achieve administrative efficiency and ensure understanding of the unique needs of the ombudsmen programs.

Educate common administrative staff to purpose and function of all ombudsmen so they can respond accurately to questions about budget and other ombudsmen issues.

Shared caseload database: One caseload management database instead of many will create efficiencies and reduce overlap where complainants may call different offices with similar questions.

Statewide Systems Project (SSP): Sign a shared services agreement to reduce the administrative responsibilities and time involved in implementing SSP.

Telecommuting: Allow people to work at home to reduce interruptions and make more efficient and effective use of time.

Shared technical consultants: Create a list or directory of technical consultants each office has used to reduce time spent finding individuals with the expertise sought by different offices.

Common referral directory: Create a common directory for all offices on where to refer complainants depending on the problems they experience, increasing accuracy of referrals and sharing knowledge various offices gain of available community resources.

Ombudsman ground rules and guiding principles: Create a common set to insure that ombudsmen services in Minnesota are provided consistently even though they are provided by different ombudsmen for different citizens.

Quarterly report to governor's office, press, legislature, citizens: As a measure of accountability, the various ombudsman offices, could create a common quarterly report.

Develop measures of success: To increase accountability to the public, legislature and governor, the ombudsmen could develop ways to measure individual office success, such as complainant satisfaction surveys, etc.

CHANGES THAT WOULD REQUIRE LEGISLATION

To reduce the number of possible changes under discussion, participants noted that the following changes would require legislation and could not

be accomplished simply by agreement among the Roundtable members:

- Ombudsman chapter in Minnesota Statutes
- Single ombudsman
- Public advocate
- Abolish all ombudsman offices
- Generating revenue
- Common intake
- Joint biennial report

EVALUATION

Roundtable members discussed the various possible changes.

The public advocate would provide one stop shopping and would delegate the complaints to the appropriate ombudsman or agency. It could fill the gaps but it could also be confusing to the public.

A single ombudsman would need a consistent philosophy to work. The different ombudsmen constituencies have different expectations of what their designated ombudsman does. Creating a single ombudsman would encounter problems with allocation of resources. The process would be politicized greatly beyond whatever degree of politicization might exist now.

The constituent groups and the ombudsman who serve them need to be at the table where important decisions are made. Concern existed that a single ombudsman structure would prevent the access that is currently afforded to groups. One ombudsman would represent all the offices instead of the offices representing themselves and having access to the decision making process.

Additionally, an ombudsman needs experience in the unique problems the various communities and constituent groups face for the communities to trust them.

A roundtable of ombudsmen has an advantage over a single ombudsman because it does not mean loss of unique qualities.

The roundtable of ombudsman could function as one body, when needed.

Retreat participants saw three options:

- A common body using a chapter in Minnesota Statutes and a roundtable.
- Modified status quo achieving savings through shared resources and services agreements.
- One ombudsman.

Individual offices need autonomy and independence from the bureaucracies they watch over and from each other. Statutory independence does not require the ombudsman to have a space separate from the agency over which the ombudsman has jurisdiction but should have operational autonomy to reduce conflicts of interest.

DISCUSSION OF MODELS

Common chapter and roundtable - The creation of a common chapter in legislation with each ombudsman being outlined in the legislation. It puts the function in one place in law making it easier for everyone to understand the role and function of an ombudsman as well as just what ombuds-

man programs are available in Minnesota. It would accomplish a number of other things including creating a statutory definition of an ombudsman. It would define powers, responsibilities and immunities of the various offices. It would provide for a listing of common powers generic to all ombudsman in Minnesota. It allows for individual uniqueness of the various offices and the citizen's they serve. It can provide a vehicle for sharing resources to streamline administrative efficiencies where practical. It puts all of the ombudsmen in one place in statute. It's major drawback was the consideration of the fact that once it was proposed, it could result in a outcome different than that proposed which may hurt the different constituent groups and possibly be less efficient if changes were not monitored.

Modified status quo - Modifications to the status quo address administrative inefficiencies without changes in legislation. After further study, Roundtable members may agree to do the following:

- Co-locating offices as existing leases expire
- A single 800 number in common.
- Shared staff and resources.
- Administrative pool.
- Pooled: training, attorney, computer training, caseload management database.
- Common brochure.
- Possible common intake.
- Possible common biennial report.
- Resource directory.
- Outstate resource sharing.
- Increased telecommuting.
- Shared service agreements.
- Shared investigative protocol.

This proposal was viewed as achieving administrative effectiveness without requiring legislation. It would be an evolving process, tested as it is implemented. However there is concern that this may be viewed as stopping short of reinventing government or that nothing substantive has changed.

No change/status quo - All ombudsman services would remain exactly as is with no changes. This may not be realistic or proactive enough to reflect the changing needs of citizens given the rapidly changing environment of government services.

Single ombudsman - This option was viewed as not viable by consensus of the group for three reasons. First, it involves the creation and expense of another commissioner level state employee and another level of bureaucracy. Second it would mean a loss of power and/or representation of certain groups of disenfranchised citizens or constituencies at the decision making table. Third, although it was thought to have increased powers it could be viewed as too much power in the hands of one appointed individual.

Privatization through block grants - This option was also discarded by the group. Although it could be viewed as reducing the size of state government, the negative impact would far outweigh any perceived public good. Included among the cons were a loss of power and stature as well as government access because private non-profit organizations do not have the same access to government systems as the current ombudsmen do. There would be loss of broad access to information, critical powers lie in the power to subpoena, immunity and shield laws; loss of government checks and balances as

well as controls over ombudsmen. Many of these powers should be in the hands government agencies controlled by legislature. There would be a dependence on granting authority with more time spent on raising money. A governmental ombudsman has more impact and respect among government agencies because the ombudsman has access to the same policy makers as the agencies do.

Abolishing ombudsmen offices - This alternative could appear attractive because it would appear to mean less government. There would be a sense among legislators that they had done something. However this was not considered because the pros were seen to be based on false assumptions and because there would likely be increased costs due to an increase in law suits and court administration in an already overcrowded courts system, not to mention the burden it would place on already existing agencies. Government is improved through the work of ombudsmen. It would also mean the abandonment of the voice of the powerless and there would be a loss of an independent administrative oversight over the bureaucracy.

RECOMMENDATIONS

Retreat participants looked at the creation of an ombudsman chapter in Minnesota Statutes in light of the two tiers of concerns discussed in the first session of the retreat.

Participants concluded an ombudsman chapter:

- creates a definition of ombudsman
- creates administrative efficiencies by allowing shared resources;

- deals with inequities by identifying generic ombudsman powers/ authorities; and
- alleviates one stop shopping concerns as ombudsman will be working together to get citizens to the appropriate resources.

As a result, the Ombudsman Roundtable of Minnesota is proposing that legislation be drafted to create a common chapter for all ombudsmen language in the Minnesota Code.

Proposed Legislation: Create a chapter of Minnesota Statute (15B), Ombudsmen in General, to provide for a statutory definition of an ombudsman, allow for a clear understanding of the powers and duties of an ombudsman and to clearly identify which services are available to citizens in one place in statute. The suggested legislation would contain the following :

- definition of an ombudsman;
- generic language applicable to all ombudsman;
- a list of powers and duties that would apply to ombudsman programs which would be consistent with the historical purpose of an ombudsman;
- permissive language to allow for sharing and streamlining of administrative resources and equipment-examples may include:
 - a.) recognition the existing roundtable for the purpose of addressing common needs including training, policy development, common brochure listing all ombudsman services in Minnesota, a common report to the legislative and executive committees who

know the most about a particular ombudsman service.

- b.) could direct the ombudsman to do other related citizen/user friendly and efficient services including the possibility of a common 800 number and better positioning of directory listings;

- references to current ombudsmen programs available to citizens, as well as providing a place to reference future ombudsman programs that may be created;
- directions to the Revisor to amend current statutes for the individual offices by adding a reference to the common chapter.

Vision:

The proposed chapter would recognize the following important concepts from existing ombudsman statutes:

- retention of specific statutory autonomy of each office;
- the specialization of services provided by specific ombudsmen which is considered to be the strongest feature of the current programs;
- allow for different appointing authorities consistent with the needs of the communities served;
- allow for oversight, policy review and funding needs by those topic specific legislative committees who know the most about a particular ombudsman service.

IN CONCLUSION

The members of the Roundtable are committed to efficient and effective services to citizens. The Ombudsman Roundtable is promoting the benefits of a common chapter of law. If that is not the position of the legislature, members of the Roundtable may choose to pursue the efficiencies of the modified status quo on their own initiative. (See examples listed in the Appendix.)

These are critical times. When Government agencies are expected to do more with less and employees must make decisions under pressure, the potential for error rises. Everyone becomes more vulnerable and no agency of government or government regulated system is exempt from the pressures and fiscal restraints. It is for this very reason that ombudsman services are needed now more than ever.

NOTES:

¹ Safire's Political Dictionary, 1978, pp. 483-484

² Ibid.

³ adapted from 1992 Annual Report by Stephen Owen, Former Ombudsman, Providence of British Columbia.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

APPENDIX

**OMBUDSMEN IN THE
STATE OF MINNESOTA**

OFFICE OF THE OMBUDSMAN FOR MENTAL HEALTH AND MENTAL RETARDATION

The Office of Ombudsman for Mental Health and Mental Retardation was established in 1987 as a result of the passage of the Comprehensive Adult Mental Health Act and the 1984 Federal Court Decision known as the Welsch Consent Decree requiring the state to develop programs and move persons with mental retardation out of state institutions and into community based settings.

Under Minnesota Statutes 245.91-97, the Office of Ombudsman for Mental Health and Mental Retardation is created and charged with promoting the highest attainable standards of treatment, competence, efficiency and justice for persons receiving services or treatment for mental illness, mental retardation and related conditions, chemical dependency and emotional disturbance. Concerns or complaints can come from any source. They should involve the actions of an agency, facility, or program and can be client specific or a system wide concern. Matters given priority are:

- matters affecting the health safety or welfare of clients,
- laws or rules, their interpretation and their affect on service to clients,
- policies and practices that diminish client dignity or independence,
- a disregard of client rights,
- situations of abuse or neglect,
- the deaths and serious injuries of clients,
- the quality of services provided.

The office tries to resolve concerns or complaints in a way that improves the quality of care clients receive. Possible actions by the office include:

- mediate or advocate on behalf of a client,
- consult with providers about policies, practices, and procedures,
- gather and analyze information,
- conduct investigations,
- review deaths and serious injuries to make recommendations to prevent future harm,
- examine records,
- make sight visits,
- make recommendations, issue reports and monitor results.

The office is an independent state agency with the Governor appointing the Ombudsman. The office has regional advocates around the state to provide services by geographic region. Those offices are located in St. Paul, St. Peter, Faribault, Willmar, Brainard, Fergus Falls, Moose Lake, Anoka and Cambridge. The office serves clients both in the state operated Regional Treatment Centers as well as those who receive services in the community.

The office also has a 15 member advisory board comprised of citizens of Minnesota, many of whom have backgrounds in our specialty and medicine who can advise the Ombudsman.

OMBUDSMAN FOR CORRECTIONS

The Ombudsman for Corrections was established in 1974 as an independent state agency under Mn. Stat. § 241.41. The concept for an Ombudsman was promoted by both the governor and the commissioner of corrections as a constructive means for examining and resolving inmate grievances at a time when the corrections system was undergoing massive reform.

In 1976, the Ombudsman's jurisdiction was expanded to include regional corrections or detention facilities and those county programs or facilities operating under the Community Corrections Act. The Minnesota Ombudsman for Corrections was the first such specialty Ombudsman established in the nation. The Ombudsman continues to be an integral part of the Minnesota corrections system.

The purpose of the agency is to conduct investigations of complaints lodged by inmates, staff and other interested sources. The Ombudsman maintains high visibility within the state correctional system while maintaining a low profile insofar as efforts are made to resolve situations of conflict within the framework of the Department of Corrections.

Many of initial objectives of the Ombudsman remain in effect today:

Improving the relationship between staff and inmates by providing the inmates with information on the actions, motives and design of administrative action.

Alleviation of tension within the prison by means of more open communications.

The improvement and clarification of administrative procedures and regulations.

The primary goal of the Ombudsman for Corrections is to provide for safe, secure and humane living conditions for inmates and staff in Minnesota's correctional settings.

The results of Ombudsman's activities are safer prison environments, fewer costly lawsuits by inmates, and a rapid response system for complaint resolution.

OFFICE OF OMBUDSPERSONS FOR FAMILIES

BACKGROUND

The Office of Ombudsperson for Families was created in 1991 under Minn. Stat. §257.0755-.0762 in response to requests from families who had been negatively impacted by the intervention of social services agencies.

In one county alone 97% of children who were removed from their families were children of color. DHS (1993).

In the State of Minnesota in 1993, 11,807 children entered care at the county level, 4,233 children are children of color. This comprises 36% of all children entering care in the state of Minnesota. DHS (1993).

12% of children under 18 in Minnesota are children of color.

In 1989, the rate of poverty for children of color exceeded the statewide average for all children by 12.4%. 48% of American Indian children, 49.5% of African American children, 37.1% percent of Asian and Pacific Islander American, and 30.7% of Latino Children, live in poverty today. Only 9.7% Of European American Children live in poverty. Kids Count (1994).

Children living in poverty are at high risk for malnutrition, hunger, poor housing, instability in schooling, and high levels of personal and family stress that causes abuse and neglect.

FINDINGS

The high rate of removal of children of color from their families, the lack of Guardian Ad Litem of color in the Juvenile court system, the lack of availability of interpreters in court, the lack of compliance with the Indian Welfare P.L. 95-608, Minnesota Indian Family Preservation, Family Preservation, Children's Mental Health, and Heritage Preservation Acts, and many other violations of legislation moved the communities of color to advocate at the Legislature for the creation of the Office of Ombudsperson for Families.

The main goal of the Office of Ombudsperson for families is to ensure that all laws governing the protection of children and their families are implemented in a culturally competent manner.

The Office of Ombudsperson for Families was created to ensure that decisions, acts, rules, programs, procedures and any other form of policy and decision making processes are in compliance with the laws that protect children of color in the State of Minnesota.

OFFICE OF OMBUDSMAN FOR CRIME VICTIMS

The Office of Crime Victim's Ombudsman (OCVO) was established in 1986 by Minn. Stat. § 611A.72-.74 to address crime victim's concerns that they had no voice in the criminal justice system and to ensure compliance with statutory protection for crime victims. The office functions to provide redress to crime victims or witnesses who feel that their statutory rights have been violated or they have been mistreated by the criminal justice system or Victim/Witness Service Providers.

The OCVO provides redress in the following ways:

- by conducting impartial investigations of complaints regarding violations of rights and mistreatment of victims;
- by providing a centralized, comprehensive source of information and referral through a toll free number that is operated 24 hours per day, 7 days per week;
- by informing the public and professionals about victim's rights through speaking engagements, training, and the media;
- by acting as a liaison between crime victims/witnesses and criminal justice professionals,
- by providing leadership in policy making and planning regarding services to victims; and,
- by monitoring compliance through the collection of data.

VISION

The Office of Crime Victim's Ombudsman envisions a state where all crime victims are served justly, equitably, and fairly by Minnesota's Criminal Justice Organizations.

MISSION

In striving to achieve this Vision, we are committed to the following goals for fairness and service:

- Investigate and resolve complaints efficiently;
- Deliver relevant, timely, impartial and accessible services;
- Foster objective standards of government administration;
- Act as a resource to criminal justice organizations, to crime victims, and to the public to prevent future complaints;
- Increase public awareness of our organization;
- Require ethical performance and accountability;
- Encourage teamwork through joint consultation and communication;
- Monitor and evaluate our organizational performance;
- Realize individual potential through pro-active human resources practices.

OFFICE OF OMBUDSMAN FOR OLDER MINNESOTANS

Office of Ombudsman for Older Minnesotans
444 Lafayette Rd. N., St. Paul, MN 55155-3843
(612) 296-0382 • 1 (800) 657-3591 • FAX (612) 297-7855

The Office of Ombudsman for Older Minnesotans works with consumers, concerned citizens, nursing homes, hospitals, home care agencies, and government agencies to enhance the quality of care and quality of life of older individuals receiving health and long term care services.

The Office is operated by the Minnesota Board on Aging in accordance with Minn. Stat. § 256.974. The ombudsman:

- Investigates concerns from consumers, or others on their behalf, relating to their health, safety, welfare, rights, benefits and the quality of the health and long term care services they receive.
- Works to resolve disputes between consumers and government agencies or health care providers using a non-regulatory approach of negotiation or mediation.
- Advocates for consumers when their rights have been violated or they are not receiving proper care or assistance.
- Promotes informed consumer decision making through information and educational programs about consumer's rights and responsibilities, and the laws and regulations pertaining to health and long term care services.
- Advocates for reforms in the health, long term care and social service system to better meet consumer needs by commenting on proposed laws or rules and advising state agencies about consumer experiences with providers and government agencies.

Services of the Office of Ombudsman for Older Minnesotans are provided through a toll free hotline, the state office in St. Paul and at ten regional locations throughout the state. Designated ombudsman staff and a dedicated and trained core of volunteers provide a local community presence in our nursing homes. Efforts are also underway to expand the volunteer presence in either residential long term care settings serving older people.

During 1994, the Office of Ombudsman for Older Minnesotans assisted over 11,000 elders and successfully resolved approximately 77% of their concerns about their health or long term care services.

SMALL BUSINESS OMBUDSMAN

When the Clean Air Act was amended in 1990, it was recognized that many small businesses that had never been regulated before would now be subject to the new complex air quality regulations. The complexity of the air quality regulations, coupled with the fact that many small businesses had limited technical and financial resources, moved Congress to pass Section 507 of the 1990 Clean Air Act Amendments. This section required all states to establish "Small Business Stationary Source Technical and Environmental Compliance Assistance Programs." These programs were mandated to ease the impact and the burden on small businesses.

The Minnesota legislature established the "Small Business Air Quality Compliance Assistance Program" by statute (M.S. 116.95-116.99) on April 29, 1992. The program was to have three components—the Small Business Compliance Assistance Program, the Small Business Ombudsman, and the Small Business Advisory Council. The Small Business Ombudsman program began July, 1993. The Small Business Ombudsman is housed in the Minnesota Pollution Control Agency.

The Small Business Ombudsman has a variety of duties. Some of those are:

- facilitate and promote the participation of small businesses and their perspectives during rule development and policy decisions;
- disseminate environmental information to small businesses in the manner that is most effective for them;
- work with trade associations and business groups to identify cooperative programs for technical and financial assistance and to gain small business feedback for MPCA programs;
- operate a toll-free telephone line to provide free, confidential help on individual source problems and grievances;
- investigate and assist in the resolution of complaints and disputes from small businesses; and to generally
- provide a central contact person for small businesses who are confused and need assistance with their environmental requirements and responsibilities.

AGRICULTURE OMBUDSMAN

This office is authorized under Minn. Stat. §17.95 to do the following:

- Provide information
- Investigate Complaints
- Provide or facilitate dispute resolutions.

TAXPAYER RIGHTS ADVOCATE

The statutory authority for the position of "Taxpayer Rights Advocate" is found in Minn. Stat. § 270.273. The Taxpayer Rights Advocate reports directly to the Commissioner of Revenue. As stated in Minn. Stat. § 270.273, subd. 6, "the taxpayer rights advocate shall represent the interests of taxpayers who have grievances against the department [of revenue] in connection with an audit or collection activity..."

If a taxpayer wishes the assistance of the Taxpayer Rights Advocate, the taxpayer must file an application with the Taxpayer Rights Advocate in the form and manner prescribed by the Commissioner of Revenue.

The taxpayer rights advocate has the authority to issue a taxpayer assistance order if, in the determination of the Taxpayer Rights Advocate, the manner in which the state tax laws are being administered is creating or will create an unjust and inequitable result for the taxpayer. A "taxpayer assistance order" is an order that may require the Department of Revenue to release property of the taxpayer levied on, cease any action, or refrain from taking any action to enforce the state tax laws against the taxpayer, until the issue(s) giving rise to the order have been resolved. The Taxpayer Rights Advocate's decision to issue or not issue a taxpayer assistance order is final and cannot be appealed to the Tax Court or any other court. A taxpayer assistance order may be modified or rescinded only by the Commissioner of Revenue.

EXAMPLES OF INTERAGENCY COOPERATION

- 1994 Ombudsman Roundtable voluntarily formed to share expertise.
- 1994 The offices of Ombudsman for Mental Health and Mental Retardation, Corrections and Crime Victims worked together to host a reception and 3 days of training for the Russian Federation Commission on Human Rights.
- 1994 Ombudsman for Corrections used the Office of Ombudsman for Mental Health and Mental Retardation to consult on case involving a prisoner with mental illness.
- 1994 & 1995 Met six to ten times per year to share updates and information and discuss issues of mutual benefit.
- 1995 All Ombudsman participated in a retreat to collaborate on shared services to deal efficiently with small agency problems. Each agency contributed to the cost of a facilitator.
- 1995 All Ombudsman agencies and departments were allowed to take advantage of a joint training session on advanced investigative techniques.
- 1995 The Offices of Ombudsman for Mental Health and Mental Retardation, Corrections and Crime Victims coordinated a national conference on ombudsmanship and included the expertise of the Ombudsman for Long Term Care, Small Business Ombudsman and the Ombudspersons for Families.
- 1995 Office of Ombudsman for Mental Health and Mental Retardation and Long Term Care conducted joint training in the new Vulnerable Adult Act.
- 1995 Ombudsmen issue joint report.
- 1995 Ombudsman for Correction developed a case management computer data system and agreed to share computer program with other Ombudsman Offices.

CITIZEN COMMENTS ABOUT OMBUDSMAN PROGRAMS

"Thank you for attending our neighborhood meeting regarding ____ and our relationships in the neighborhood. You brought great information and balance to a sensitive issue and I was very thankful that you were there to present a much needed perspective ..."

"...thank you for your hard work ... I also want you to know that I appreciate the valuable contributions you have made to the reform proposal This effort would not have (been) possible without your dedication and commitment ... "

"... acknowledge the outstanding job done by...in assisting us resolve a conflict with a group of citizens in ... , Mn regarding the location of a group home ... "

"Our family would like to take this opportunity to say Thank You! for coming to represent us in our time of need. We greatly appreciate all your input and understanding as well as the kind concern you expressed for our family ..."

"... It was wonderful to finally have my questions answered. It's the first time in nine months that I feel there is hope ..."

"Your office provides another perspective which I think was helpful."

_____ called to thank our office for their assistance with "her" concern.

"Any place that can take the time with a victim to understand the laws is a great help without a lot of Red Tape. I appreciate your help. Thank you."

"I could not get any satisfaction from our local police department until your office pursued the complaint. At this point, an investigation will be done on the matter. Thank you."

"Thank you very much for your help. The results were not what I anticipated but that's a problem with the law, not your office. You provide a much needed service. The investigator was very kind and helpful, and always available to talk."

"Just having someone skilled to look at our case was comforting. Thank you."

"Nice helpful staff that listens."

"When a letter was sent to the court from your office on our behalf, it did trigger an early scheduling of a hearing. Therefore, we believe your service was very helpful in our case. Thank you very much for the action, and for providing someone who listened to our frustrations!!"

EXISTING MINNESOTA STATUTES

**OFFICE OF THE OMBUDSMAN FOR
MENTAL HEALTH AND MENTAL RETARDATION
MINNESOTA STATUTE**

245.91 DEFINITIONS.

Subd. 1. **Applicability.** For the purposes of sections 245.91 to 245.97, the following terms have the meanings given them.

Subd. 2. **Agency.** "Agency" means the divisions, officials, or employees of the state departments of human services and health and of designated county social service agencies as defined in section 256G.02, subdivision 7, that are engaged in monitoring, providing, or regulating services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance.

Subd. 3. **Client.** "Client" means a person served by an agency, facility, or program, who is receiving services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance.

Subd. 4. **Facility or program.** "Facility" or "program" means a nonresidential or residential program as defined in section 245A.02, subdivisions 10 and 14, that is required to be licensed by the commissioner of human services, and an acute care inpatient facility that provides services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance.

Subd. 5. **Regional center.** "Regional center" means a regional center as defined in section 253B.02, subdivision 18.

Subd. 6. **Serious injury.** "Serious injury" means:

- (1) fractures;
- (2) dislocations;
- (3) evidence of internal injuries;
- (4) head injuries with loss of consciousness;
- (5) lacerations involving injuries to tendons or organs, and those for which complications are present;
- (6) extensive second degree or third degree burns, and other burns for which complications are present;
- (7) extensive second degree or third degree frostbite, and others for which complications are present;
- (8) irreversible mobility or avulsion of teeth;
- (9) injuries to the eyeball;
- (10) ingestion of foreign substances and objects that are harmful;
- (11) near drowning;
- (12) heat exhaustion or sunstroke; and
- (13) all other injuries considered serious by a physician.

History: 1987 c 352 s 2; 1988 c 543 s 1-3; 1989 c 282 art 2 s 57

245.92 OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS; FUNCTION.

The ombudsman for persons receiving services or treatment for mental illness mental retardation or a related condition, chemical dependency, or emotional disturbance shall promote the highest attainable standards of treatment, competence, efficiency, and justice. The ombudsman may gather information about decisions, acts, and other matters of an agency, facility, or program. The ombudsman is appointed by the governor, serves in the unclassified service, and may be removed only for just cause. The ombudsman must be selected without regard to political affiliation and must be a person who has knowledge and experience concerning the treatment, needs, and rights of clients, and who is highly competent and qualified. No person may serve as ombudsman while holding another public office.

History: 1987 c 352 s 3; 1988 c 543 s 4

245.93 ORGANIZATION OF OFFICE OF OMBUDSMAN.

Subdivision 1. **Staff.** The ombudsman may appoint a deputy and a confidential secretary in the unclassified service and may appoint other employees as authorized by the legislature. The ombudsman and the full-time staff are members of the Minnesota state retirement association.

Subd. 2. **Advocacy.** The function of mental health and mental retardation client advocacy in the department of human services is transferred to the office of ombudsman according to section 15.039. The ombudsman shall maintain at least one client advocate in each regional center.

Subd. 3. **Delegation.** The ombudsman may delegate to members of the staff any authority or duties of the office except the duty of formally making recommendations to an agency or facility or reports to the governor or the legislature.

245.94 POWERS OF OMBUDSMAN; REVIEWS AND EVALUATIONS; RECOMMENDATIONS.

Subdivision 1. **Powers.** (a) The ombudsman may prescribe the methods by which complaints to the office are to be made, reviewed, and acted upon. The ombudsman may not levy a complaint fee.

(b) The ombudsman may mediate or advocate on behalf of a client.

(c) The ombudsman may investigate the quality of services provided to clients and determine the extent to which quality assurance mechanisms within state and county government work to promote the health, safety, and welfare of clients, other than clients in acute care facilities who are receiving services not paid for by public funds.

(d) At the request of a client, or upon receiving a complaint or other information affording reasonable grounds to believe that the rights of a client who is not capable of requesting assistance have been adversely affected, the ombudsman may gather information about and analyze, on behalf of the client, the actions of an agency, facility, or program.

(e) The ombudsman may examine, on behalf of a client, records of an agency, facility, or program if the records relate to a matter that is within the scope of the ombudsman's authority. If the records are private and the client is capable of providing consent, the ombudsman shall first obtain the client's consent. The ombudsman is not required to obtain consent for access to private data on clients with mental retardation or a related condition. The ombudsman is not required to obtain consent for access to private data on decedents who were receiving services for mental illness, mental retardation or a related condition, or emotional disturbance.

(f) The ombudsman may subpoena a person to appear, give testimony, or produce documents or other evidence that the ombudsman considers relevant to a matter under inquiry. The ombudsman may petition the appropriate court to enforce the subpoena. A witness who is at a hearing or is part of an investigation possesses the same privileges that a witness possesses in the courts or under the law of this state. Data obtained from a person under this paragraph are private data as defined in section 13.02, subdivision 12.

(g) The ombudsman may, at reasonable times in the course of conducting a review, enter and view premises within the control of an agency, facility, or program.

(h) The ombudsman may attend department of human services review board and special review board proceedings; proceedings regarding the transfer of patients or residents, as defined in section 246.50, subdivisions 4 and 4a, between institutions operated by the department of human services; and, subject to the consent of the affected client, other proceedings affecting the rights of clients. The ombudsman is not required to obtain consent to attend meetings or proceedings and have access to private data on clients with mental retardation or a related condition.

(i) The ombudsman shall have access to data of agencies, facilities, or programs classified as private or confidential as defined in section 13.02, subdivisions 3 and 12, regarding services provided to clients with mental retardation or a related condition.

(j) To avoid duplication and preserve evidence, the ombudsman shall inform relevant licensing or regulatory officials before undertaking a review of an action of the facility or program.

(k) Sections 245.91 to 245.97 are in addition to other provisions of law under which any other remedy or right is provided.

Subd. 2. Matters appropriate for review. (a) In selecting matters for review by the office, the ombudsman shall give particular attention to unusual deaths or injuries of a client served by an agency, facility, or program, or actions of an agency, facility, or program that:

- (1) may be contrary to law or rule;
- (2) may be unreasonable, unfair, oppressive, or inconsistent with a policy or order of an agency, facility, or program
- (3) may be mistaken in law or arbitrary in the ascertainment of facts;
- (4) may be unclear or inadequately explained, when reasons should have been revealed;
- (5) may result in abuse or neglect of a person receiving treatment;
- (6) may disregard the rights of a client or other individual served by an agency or facility;
- (7) may impede or promote independence, community integration, and productivity for clients; or
- (8) may impede or improve the monitoring or evaluation of services provided to clients.

(b) The ombudsman shall, in selecting matters for review and in the course of the review, avoid duplicating other investigations or regulatory efforts.

Subd. 2a. Mandatory reporting. Within 24 hours after a client suffers death or serious injury, the facility or program director shall notify the ombudsman of the death or serious injury.

Subd. 3. Complaints. The ombudsman may receive a complaint from any source concerning an action of an agency, facility, or program. After completing a review, the ombudsman shall inform the complainant and the agency, facility, or program. No client may be punished nor may the general condition of the client's treatment be unfavorably altered as a result of an investigation, a complaint by the client, or by another person on the client's behalf. An agency, facility, or program shall not retaliate or take adverse action, as defined in section 626.557, subdivision 17, paragraph (c), against a client or other person, who in good faith makes a complaint or assists in an investigation.

Subd. 4. Recommendations to agency. (a) If, after reviewing a complaint or conducting an investigation and considering the response of an agency, facility, or program and any other pertinent material, the ombudsman determines that the complaint has merit or the investigation reveals a problem, the ombudsman may recommend that the agency, facility, or program:

- (1) consider the matter further;
- (2) modify or cancel its actions;
- (3) alter a rule, order, or internal policy;
- (4) explain more fully the action in question; or
- (5) take other action.

(b) At the ombudsman's request, the agency, facility, or program shall, within a reasonable time, inform the ombudsman about the action taken on the recommendation or the reasons for not complying with it.

History: 1987 c 352 s 5, 1988 c 543 s 5-8; 1989 c 282 art 2 s 58,59; 1989 c 351 s 16; 1990 c 398 s 1

245.95 RECOMMENDATIONS AND REPORTS TO GOVERNOR.

Subdivision 1. Specific reports. The ombudsman may send conclusions and suggestions concerning any matter reviewed to the governor. Before making public a conclusion or recommendation that expressly or implicitly criticizes an agency, facility, program, or any person, the ombudsman shall consult with the governor and the agency, facility, program, or person concerning the conclusion or recommendation. When sending a conclusion or recommendation to the governor that is adverse to an agency, facility, program, or any person, the ombudsman shall include any statement of reasonable length made by that agency, facility, program, or person in defense or mitigation of the office's conclusion or recommendation.

Subd. 2. General reports. In addition to whatever conclusions or recommendations the ombudsman may make to the governor on an ad hoc basis, the ombudsman shall at the end of each year report to the governor concerning the exercise of

the ombudsman's functions during the preceding year.

History: 1987 c 352 s 6; 1988 c 543 s 9

245.96 CIVIL ACTIONS.

The ombudsman and designees of the ombudsman are not civilly liable for any action taken under sections 245.91 to 245.97 if the action was taken in good faith, was within the scope of the ombudsman's authority, and did not constitute willful or reckless misconduct.

History: 1986 c 444; 1987 c 352 s 7

245.97 OMBUDSMAN COMMITTEE.

Subdivision 1. Membership. The ombudsman committee consists of 15 members appointed by the governor to three-year terms. Members shall be appointed on the basis of their knowledge of and interest in the health and human services system subject to the ombudsman's authority. In making the appointments, the governor shall try to ensure that the overall membership of the committee adequately reflects the agencies, facilities, and programs within the ombudsman's authority and that members include consumer representatives, including clients, former clients, and relatives of present or former clients; representatives of advocacy organizations for clients and other individuals served by an agency, facility, or program; human services and health care professionals, including specialists in psychiatry, psychology, internal medicine, and forensic pathology; and other providers of services or treatment to clients.

Subd. 2. Compensation; chair. Members do not receive compensation, but are entitled to receive reimbursement for reasonable and necessary expenses incurred. The governor shall designate one member of the committee to serve as its chair at the pleasure of the governor.

Subd. 3. Meetings. The committee shall meet at least four times a year at the request of its chair or the ombudsman.

Subd. 4. Duties. The committee shall advise and assist the ombudsman in selecting matters for attention; developing policies, plans, and programs to carry out the ombudsman's functions and powers and making reports and recommendations for changes designed to improve standards of competence, efficiency, justice, and protection of rights. The committee shall function as an advisory body.

Subd. 5. Medical review- subcommittee. At least five members of the committee, including at least three physicians, one of whom is a psychiatrist, must be designated by the governor to serve as a medical review subcommittee. Terms of service, vacancies, and compensation are governed by subdivision 2. The governor shall designate one of the members to serve as chair of the subcommittee. The medical review subcommittee may:

- (1) make a preliminary determination of whether the death of a client that has been brought to its attention is unusual or reasonably appears to have resulted from causes other than natural causes and warrants investigation;
- (2) review the causes of and circumstances surrounding the death;
- (3) request the county coroner or medical examiner to conduct an autopsy;
- (4) assist an agency in its investigations of unusual deaths and deaths from causes other than natural causes; and
- (5) submit a report regarding the death of a client to the committee, the ombudsman, the client's next-of-kin, and the facility where the death occurred and, where appropriate, make recommendations to prevent recurrence of similar deaths to the head of each affected agency or facility.

Subd. 6. Terms, compensation, removal and expiration. The membership terms, compensation and removal of members of the committee and the filling of membership vacancies are governed by section 15.0575. The ombudsman committee and the medical review subcommittee expire on June 30, 1994.

History: 1987 c 352 s 8, 1988 c 543 s 10; 1988 c 629 s 46; 1993 c 286 s 26

OMBUDSMAN FOR CORRECTIONS MINNESOTA STATUTE

241.41 OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS; FUNCTION.

The office of ombudsman for the Minnesota state department of corrections is hereby created. The ombudsman shall serve at the pleasure of the governor in the unclassified service, shall be selected without regard to political affiliation, and shall be a person highly competent and qualified to analyze questions of law, administration, and public policy. No person may serve as ombudsman while holding any other public office. The ombudsman for the department of corrections shall be accountable to the governor and shall have the authority to investigate decisions, acts, and other matters of the department of corrections so as to promote the highest attainable standards of competence, efficiency, and justice in the administration of corrections.

History: 1973 c 553 s 1

241.42 DEFINITIONS.

Subdivision 1. For the purposes of sections 241.41 to 241.45, the following terms shall have the meanings here given them.

Subd. 2. "Administrative agency" or "agency" means any division, official, or employee of the Minnesota department of corrections, the commissioner of corrections, the board of pardons and regional correction or detention facilities or agencies for correction or detention programs including those programs or facilities operating under chapter 401, but does not include:

- (a) any court or judge;
- (b) any member of the senate or house of representatives of the state of Minnesota;
- (c) the governor or the governor's personal staff;
- (d) any instrumentality of the federal government of the United States;
- (e) any political subdivision of the state of Minnesota;
- (f) any interstate compact.

Subd. 3. "Commission" means the ombudsman commission.

Subd. 4. [Repealed, 1976 c 318 s 18]

History: 1973 c 553 s 2; 1973 c 654 s 15; 1975 c 271 s 6, 1976 c 318 s 1; 1983 c 274 s 18, 1986 c

241.43 ORGANIZATION OF OFFICE OF OMBUDSMAN.

Subdivision 1. The ombudsman may select, appoint, and compensate out of available funds such assistants and employees as deemed necessary to discharge responsibilities. The ombudsman and full-time staff shall be members of the Minnesota state retirement association.

Subd. 2. The ombudsman may appoint an assistant ombudsman in the unclassified service.

Subd. 3. The ombudsman may delegate to staff members any of the ombudsman's authority or duties except the duty of formally making recommendations to an administrative agency or reports to the office of the governor, or to the legislature.

241.44 POWERS OF OMBUDSMAN; INVESTIGATIONS; ACTION ON COMPLAINTS; RECOMMENDATIONS.

Subdivision 1. **Powers.** The ombudsman may:

(a) prescribe the methods by which complaints are to be made, reviewed, and acted upon; provided, however, that the ombudsman may not levy a complaint fee;

(b) determine the scope and manner of investigations to be made;

(c) Except as otherwise provided, determine the form, frequency, and distribution of conclusions, recommendations, and proposals; provided, however, that the governor or a representative may, at any time the governor deems it necessary, request and receive information from the ombudsman. Neither the ombudsman nor any staff member shall be compelled to testify in any court with respect to any matter involving the exercise of the ombudsman's official duties except as may be necessary to enforce the provisions of sections 241.41 to 241.45;

(d) investigate, upon a complaint or upon personal initiative, any action of an administrative agency;

(e) request and shall be given access to information in the possession of an administrative agency deemed necessary for the discharge of responsibilities,

(f) examine the records and documents of an administrative agency;

(g) enter and inspect, at any time, premises within the control of an administrative agency;

(h) subpoena any person to appear give testimony, or produce documentary or other evidence which the ombudsman deems relevant to a matter under inquiry, and may petition the appropriate state court to seek enforcement with the subpoena; provided, however, that any witness at a hearing or before an investigation as herein provided shall possess the same privileges reserved to such a witness in the courts or under the laws of this state:

(i) bring an action in an appropriate state court to provide the operation of the powers provided in this subdivision. The ombudsman may use the services of legal assistance to Minnesota prisoners for legal counsel. The provisions of sections 241.41 to 241.45 are in addition to other provisions of law under which any remedy or right of appeal or objection is provided for any person, or any procedure provided for inquiry or investigation concerning any matter. Nothing in sections 241.41 to 241.45 shall be construed to limit or affect any other remedy or right of appeal or objection nor shall it be deemed part of an exclusionary process; and

(j) be present at commissioner of corrections parole and parole revocation hearings and deliberations.

Subd. 1a. **Actions against ombudsman.** No proceeding or civil action except removal from office or a proceeding brought pursuant to chapter 13 shall be commenced against the ombudsman for actions taken pursuant to the provisions of sections 241.41 to 241.45, unless the act or omission is actuated by malice or is grossly negligent.

Subd. 2. **Matters appropriate for investigation.** (a) In selecting matters for attention, the ombudsman should address particularly actions of an administrative agency which might be:

(1) contrary to law or rule;

(2) unreasonable, unfair, oppressive, or inconsistent with any policy or judgment of an administrative agency;

(3) mistaken in law or arbitrary in the ascertainment of facts;

(4) unclear or inadequately explained when reasons should have been revealed;

(5) inefficiently performed;

(b) The ombudsman may also be concerned with strengthening procedures and practices which lessen the risk that objectionable actions of the administrative agency will occur.

Subd. 3. **Complaints.** The ombudsman may receive a complaint from any source concerning an action of an administrative agency. The ombudsman may, on personal motion or at the request of another, investigate any action of an administrative agency.

The ombudsman may exercise powers without regard to the finality of any action of an administrative agency; however, the ombudsman may require a complainant to pursue other remedies or channels of complaint open to the complainant before accepting or investigating the complaint.

After completing investigation of a complaint, the ombudsman shall inform the complainant, the administrative agency, and the official or employee, of the action taken.

A letter to the ombudsman from a person in an institution under the control of an administrative agency shall be forwarded immediately and unopened to the ombudsman's office. A reply from the ombudsman to the person shall be delivered unopened to the person, promptly after its receipt by the institution.

No complainant shall be punished nor shall the general condition of the complainant's confinement or treatment be unfavorably altered as a result of the complainant having made a complaint to the ombudsman.

Subd. 4. Recommendations. (a) If, after duly considering a complaint and whatever material the ombudsman deems pertinent, the ombudsman is of the opinion that the complaint is valid, the ombudsman may recommend that an administrative agency should:

- (1) consider the matter further;
- (2) modify or cancel its actions;
- (3) alter a ruling;
- (4) explain more fully the action in question; or
- (5) take any other step which the ombudsman recommends to the administrative agency involved.

If the ombudsman so requests, the agency shall within the time the ombudsman specifies, inform the ombudsman about the action taken on the ombudsman's recommendation or the reasons for not complying with it.

(b) If the ombudsman has reason to believe that any public official or employee has acted in a manner warranting criminal or disciplinary proceedings, the ombudsman may refer the matter to the appropriate authorities.

(c) If the ombudsman believes that an action upon which a valid complaint is founded has been dictated by a statute, and that the statute produces results or effects which are unfair or otherwise objectionable, the ombudsman shall bring to the attention of the governor and the legislature the ombudsman's view concerning desirable statutory change.

History: 1973 c 553 s 4; 1975 c 271 s 6, 1976 c 318 s 2-4; 1980 c 509 s 48, 1981 c 311 s 39, 1982 c 545 s 24, 1983 c 274 s 18, 1985 c 248 s 70, 1986 c 444

241.441 ACCESS BY OMBUDSMAN TO DATA.

Notwithstanding section 13.42 or 13.85, the ombudsman has access to corrections and detention data and medical data maintained by an agency and classified as private data on individuals or confidential data on individuals when access to the data is necessary for the ombudsman to perform the powers under section 241.44.

History: 1987 c 351 s 19

241.45 PUBLICATION OF RECOMMENDATIONS; REPORTS.

Subdivision 1. The ombudsman may publish conclusions and suggestions by transmitting them to the office of the governor. Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency, or any person, the ombudsman shall consult with that agency or person. When publishing an opinion adverse to an administrative agency, or any person, the ombudsman shall include in such publication any statement of reasonable length made to the ombudsman by that agency or person in defense or mitigation of the action.

Subd. 2. In addition to whatever reports the ombudsman may make on an ad hoc basis, the ombudsman shall biennially report to the governor concerning the exercise of the ombudsman's functions during the preceding biennium. The biennial report is due on or before the beginning of the legislative session following the end of the biennium.

History: 1973 c 553 s 5; 1986 c 444; 1993 c 30 s 1

OFFICE OF OMBUDSPERSONS FOR FAMILIES MINNESOTA STATUTE

OMBUDSPERSON FOR FAMILIES

257.0755 OFFICE OF OMBUDSPERSON; CREATION; QUALIFICATIONS; FUNCTION.

Subdivision 1. **Creation.** One ombudsperson shall operate independently from but in collaboration with each of the following groups: the Indian Affairs Council, the Spanish-Speaking Affairs Council, the Council on Black Minnesotans, and the Council on Asian-Pacific Minnesotans.

Subd. 2. **Selection; qualifications.** The ombudsperson for each community shall be selected by the applicable community-specific board established in section 257.0768. Each ombudsperson serves in the unclassified service at the pleasure of the community specific board and may be removed only for just cause. Each ombudsperson must be selected without regard to political affiliation, and shall be a person highly competent and qualified to analyze questions of law, administration, and public policy regarding the protection and placement of children from families of color. In addition, the ombudsperson must be experienced in dealing with communities of color and knowledgeable about the needs of those communities. No individual may serve as ombudsperson while holding any other public office.

Subd. 3. **Appropriation.** Money appropriated for each ombudsperson from the general fund or the special fund authorized by section 256.01, subdivision 2, clause (15), is under the control of each ombudsperson for which it is appropriated.

History: 1991 c 292 art 3 s 20; 1993 c 369 s 77, 1994 c 632 art 4 s 62

257.076 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 257.0755 to 257.0768, the following terms shall have the meanings given them in this section.

Subd. 2. **Agency.** "Agency" means the divisions, officials, or employees of the state departments of human services and health and local district courts or a designated county social service agency as defined in section 256G.02, subdivision 7, engaged in providing child protection and placement services for children. "Agency" also means any individual, service, or program providing child protection or placement services in coordination with or under contract to any other entity specified in this subdivision.

Subd. 3. **Communities of color.** "Communities of color" means the following: American Indian, Hispanic-Latino, Asian-Pacific, African, and African-American communities.

Subd. 4. **Compadrazgo.** "Compadrazgo" is a kinship institution within the Hispanic-Latino community used as a means of parenting and caring for children from birth to adulthood.

Subd. 5. **Family of color.** "Family of color" means any family with a child under the age of 18 who is identified by one or both parents or another trusted adult to be of American Indian, Hispanic-Latino, Asian-Pacific, African, or African-American descent.

Subd. 6. **Facility.** "Facility" means any entity required to be licensed under chapter 245A.

Subd. 7. **Trusted adult.** "Trusted adult" means an individual recognized by the child's parent or legal guardian, the child's community, or both, as speaking for the child's best interest. The term includes compadrazgo and other individuals with a kinship or community relationship with the child.

History: 1991 c 292 art 3 21

257.0761 ORGANIZATION OF OFFICE OF OMBUDSPERSON.

Subdivision 1. **Staff; unclassified status; retirement.** The ombudsperson for each group specified in section 257.0755 may select, appoint, and compensate out of available funds the assistants and employees as deemed necessary to discharge responsibilities. All employees, except the secretarial and clerical staff, shall serve at the pleasure of the ombudsperson in the unclassified service. The ombudsperson and full-time staff shall be members of the Minnesota state retirement association.

Subd. 2. **Delegation to staff.** The ombudsperson may delegate to staff members any of the ombudsperson's authority or duties except the duty of formally making recommendations to an administrative agency or reports to the office of the governor, or to the legislature.

257.0762 DUTIES AND POWERS.

Subdivision 1. **Duties.** (a) Each ombudsperson shall monitor agency compliance with all laws governing child protection and placement, as they impact on children of color. In particular, the ombudsperson shall monitor agency compliance with sections 256F.07, subdivision 3a; 256F.08; 257.072; 257.075; 257.35 to 257.3579; and 260.181, subdivision 3.

(b) The ombudsperson shall work with local state courts to ensure that:

(1) court officials, public policy makers, and service providers are trained in cultural diversity. The ombudsperson shall document and monitor court activities in order to heighten awareness of diverse belief systems and family relationships;

(2) experts from the appropriate community of color including tribal advocates are used as court advocates and are consulted in placement decisions that involve children of color;

(3) guardians ad litem and other individuals from communities of color are recruited, trained, and used in court proceedings to advocate on behalf of children of color; and

(4) training programs for bilingual workers are provided.

Subd. 2. **Powers.** Each ombudsperson has the authority to investigate decisions, acts, and other matters of an agency, program, or facility providing protection or placement services to children of color. In carrying out this authority and the duties in subdivision 1, each ombudsperson has the power to:

(1) prescribe the methods by which complaints are to be made, reviewed, and acted upon;

(2) determine the scope and manner of investigations to be made;

(3) investigate, upon a complaint or upon personal initiative, any action of any agency;

(4) request and be given access to any information in the possession of any agency deemed necessary for the discharge of responsibilities. The ombudsperson is authorized to set reasonable deadlines within which an agency must respond to requests for information. Data obtained from any agency under this clause shall retain the classification which it had under section 13.02 and shall be maintained and disseminated by the ombudsperson according to chapter 13;

(5) examine the records and documents of an agency;

(6) enter and inspect, during normal business hours, premises within the control of an agency; and

(7) subpoena any agency personnel to appear, testify, or produce documentary or other evidence which the ombudsperson deems relevant to a matter under inquiry, and may petition the appropriate state court to seek enforcement with the subpoena; provided, however, that any witness at a hearing or before an investigation as herein provided, shall possess the same privileges reserved to such a witness in the courts or under the laws of this state. The ombudsperson may compel non agency individuals to testify or produce evidence according to procedures developed by the advisory board.

History: 1991 c 292 art 3 s 23; 1994 c 632 art 4 s 63

OFFICE OF OMBUDSMAN FOR CRIME VICTIMS MINNESOTA STATUTE

611A.72 CITATION.

Sections 611A.72 to 611A.74 may be cited as the "crime victim ombudsman act."

History: 1Sp1985 c 4 s 18

611A.73 DEFINITIONS.

Subdivision 1. **Definitions.** The definitions in this section apply to this section and section 611A.74.

Subd. 2. **Appropriate authority.** "Appropriate authority" includes anyone who is the subject of a complaint to the crime victim ombudsman or anyone within the agency who is in a supervisory position with regard to one who is the subject of a complaint.

Subd. 3. **Elements of the criminal justice system.** "Elements of the criminal justice system" refers to prosecuting attorneys and members of their staff; peace officers; probation and corrections officers; city, state, and county officials involved in the criminal justice system; and does not include the judiciary.

Subd. 4. **Victim.** "Victim" refers to anyone or the next of kin of anyone who has been or purports to have been subjected to a criminal act, whether a felony, a gross misdemeanor, or misdemeanor.

Subd. 5. **Victim assistance program.** "Victim assistance program" refers to any entity which provides or claims to provide services and assistance to victims on a regular, ongoing basis.

History: 1Sp1985 c 4 s 19

611A.74 CRIME VICTIM OMBUDSMAN; CREATION.

Subdivision 1. **CREATION.** The office of crime victim ombudsman for Minnesota is created. The ombudsman shall be appointed by the commissioner of public safety with the advice of the advisory council, and shall serve in the unclassified service at the pleasure of the commissioner. No person may serve as ombudsman while holding any other public office. The ombudsman is directly accountable to the commissioner of public safety and shall have the authority to investigate decisions, acts, and other matters of the criminal justice system so as to promote the highest attainable standards of competence, efficiency, and justice of or crime victims in the criminal justice system.

Subd. 2. **DUTIES.** The crime victim ombudsman may investigate complaints concerning possible violation of the rights of crime victims or witness provided under this chapter, the delivery of victim services by victim assistance programs, the administration of the crime victims reparations act, and other complaints of mistreatment by elements of the criminal justice system or victim assistance programs. The ombudsman shall act as a liaison, when the ombudsman deems necessary, between agencies, either in the criminal justice system or in victim assistance programs, and victims and witnesses. The ombudsman may be concerned with activities that strengthen procedures and practices which lessen the risk that objectionable administrative acts will occur. The ombudsman must be made available through the use of a toll free telephone number and shall answer questions concerning the criminal justice system and victim services put to the ombudsman by victims and witnesses in accordance with the ombudsman's knowledge of the facts or law, unless the information is otherwise restricted. The ombudsman shall establish a procedure for referral to the crime victim crisis centers, the crime victims reparations board, and other victim assistance programs when services are requested by crime victims or deemed necessary by the ombudsman

The ombudsman's files are confidential data as defined in section 13.02, subdivision 3, during the course of an investigation or while the files are active. Upon completion of the investigation or when the files are placed on inactive status, they are private data on individuals as defined in section 13.02, subdivision 12.

Subd. 3. **POWERS.** The crime victim ombudsman has those powers necessary to carry out the duties set out in subdivision 1, including:

(a) The ombudsman may investigate, with or without a complaint, any action of an element of the criminal justice system or a victim assistance program included in subdivision 2.

(b) The ombudsman may request and shall be given access to information and assistance the ombudsman considers necessary for the discharge of responsibilities. The ombudsman may inspect, examine, and be provided copies of records and documents of all elements of the criminal justice system and victim assistance programs. The ombudsman may request and shall be given access to police reports pertaining to juveniles and juvenile delinquency petitions, notwithstanding section 260.161. Any information received by the ombudsman retains its data classification under chapter 13 while in the ombudsman's possession. Juvenile records obtained under this subdivision may not be released to any person.

(c) The ombudsman may prescribe the methods by which complaints are to be made, received, and acted upon; may determine the scope and manner of investigations to be made; and subject to the requirements of sections 611A.72 to 611A.74, may determine the form, frequency, and distribution of ombudsman conclusions, recommendations, and proposals.

(d) After completing investigation of a complaint, the ombudsman shall inform in writing the complainant, the investigated person or entity, and other appropriate authorities of the action taken. If the complaint involved the conduct of an element of the criminal justice system in relation to a criminal or civil proceeding, the ombudsman's findings shall be forwarded to the court in which the proceeding occurred.

(e) Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the ombudsman shall consult with that agency or person.

Subd. 4. **NO COMPELLED TESTIMONY.** Neither the ombudsman nor any member of the ombudsman's staff may be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to matters involving the exercise of official duties except as may be necessary to enforce the provisions of this section.

Subd. 5. **RECOMMENDATIONS.** (a) On finding a complaint valid after duly considering the complaint and whatever material the ombudsman deems pertinent, the ombudsman may recommend action to the appropriate authority

(b) If the ombudsman makes a recommendation to an appropriate authority for action, the authority shall, within a reasonable time period, but not more than 30 days, inform the ombudsman about the action taken or the reasons for not complying with the recommendation.

(c) The ombudsman may publish conclusions and suggestions by transmitting them to the governor, the legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency the ombudsman shall include any statement the administrative agency may have made to the ombudsman by way of explaining its past difficulties and its present rejection of the ombudsman's proposals.

Subd. 6. **REPORTS.** In addition to whatever reports the ombudsman may make from time to time, the ombudsman shall biennially report to the legislature and to the governor concerning the exercise of ombudsman functions during the preceding biennium. The biennial report is due on or before the beginning of the legislative session following the end of the biennium.

**OFFICE OF OMBUDSMAN
FOR OLDER MINNESOTANS
MINNESOTA STATUTE**

256.974 OFFICE OF OMBUDSMAN FOR OLDER MINNESOTANS; LOCAL PROGRAMS.

The ombudsman for older Minnesotans serves in the classified service under section 256.01 subdivision 7, in an office within the Minnesota board on aging that incorporates the long-term care ombudsman program required by the Older Americans Act, Public Law Number 100-75, United States Code, title 42, section 3027(a)(12), and established within the Minnesota board on aging. The Minnesota board on aging may make grants to and designate local programs for the provision of ombudsman services to clients in county or multicounty areas. The local program may not be an agency engaged in the provision of nursing home care, hospital care, or home care services either directly or by contract, or have the responsibility for planning, coordinating, funding, or administering nursing home care, hospital care, or home care services.

History: 1987 c 403 art 2 s 66; 1989 c 282 art 2 s 115

256.9741 DEFINITIONS.

Subdivision 1. "Long-term care facility" means a nursing home licensed under sections 144A.02 to 144A.10 or boarding care home licensed under sections 144.50 to 144.56.

Subd. 2. "Acute care facility" means a facility licensed as a hospital under sections 144.50 to 144.56.

Subd. 3. "Client" means an individual who requests, or on whose behalf a request is made for, ombudsman services and is (a) a resident of a long-term care facility or (b) a Medicare beneficiary who requests assistance relating to access, discharge, or denial of inpatient or outpatient services, or (c) an individual reserving or requesting home care service.

Subd. 4. "Area agency on aging" means an agency responsible for coordinating a comprehensive aging services system within a planning and service area that has been designated an area agency on aging by the Minnesota board on aging.

Subd. 5. "Office" means the office of ombudsman established within the Minnesota board on aging or local ombudsman programs that the board on aging designates.

Subd. 6. "Home care service" means health, social, or supportive services provided to an individual for a fee in the individual's residence and in the community to promote, maintain, or restore health, or maximize the individual's level of independence, while minimizing the effects of disability and illness.

History: 1987 c 403 art 2 s 67; 1989 c 282 art 2 s 116-118

256.9742 DUTIES AND POWERS OF THE OFFICE.

Subdivision 1. **Duties.** The ombudsman shall:

(1) gather information and evaluate any act, practice, policy, procedure, or administrative action of a long-term care facility, acute care facility, home care service provider, or government agency that may adversely affect the health, safety, welfare, or rights of any client;

(2) mediate or advocate on behalf of clients;

(3) monitor the development and implementation of federal, state, or local laws, rules, regulations, and policies affecting the rights and benefits of clients;

(4) comment on and recommend to the legislature and public and private agencies regarding laws, rules, regulations, and policies affecting clients;

- (5) inform public agencies about the problems of clients;
- (6) provide for training of volunteers and promote the development of citizen participation in the work of the office;
- (7) conduct public forums to obtain information about and publicize issues affecting clients;
- (8) provide public education regarding the health, safety, welfare, and rights of clients; and
- (9) collect and analyze data relating to complaints, conditions, and services.

Subd. 1a. Designation; local ombudsman representatives. (a) In designating an individual to perform duties under this section, the ombudsman must determine that the individual is qualified to perform the duties required by this section.

(b) An individual designated under this section must successfully complete an orientation training conducted under the direction of the ombudsman or approved by the ombudsman. Orientation training shall be at least 20 hours and will consist of training in: investigation, dispute resolution, health care regulation, confidentiality, resident and patients' rights, and health care reimbursement.

(c) The ombudsman shall develop and implement a continuing education program for individuals designated under this section. The continuing education program shall be at least 60 hours annually.

(d) The ombudsman may withdraw an individual's designation if the individual fails to perform duties of this section or meet continuing education requirements. The individual may request a reconsideration of such action by the board on aging whose decision shall be final.

Subd. 2. Immunity from liability. The ombudsman or designee under this section is immune from civil liability that otherwise might result from the person's actions or omissions if the person's actions are in good faith, are within the scope of the person's responsibilities as an ombudsman, and do not constitute willful or reckless misconduct.

Subd. 3. Posting. Every long-term care facility and acute care facility shall post in a conspicuous place the address and telephone number of the office. A home care service provider shall provide all recipients with the address and telephone number of the office. The posting or notice is subject to approval by the ombudsman.

Subd. 4. Access to long-term care and acute care facilities and clients. The ombudsman or designee may:

- (1) enter any long-term care facility without notice at any time;
- (2) enter any acute care facility without notice during normal business hours;
- (3) enter any acute care facility without notice at any time to interview a patient or observe services being provided to the patient as part of an investigation of a matter that is within the scope of the ombudsman's authority, but only if the ombudsman's or designee's presence does not intrude upon the privacy of another patient or interfere with routine hospital services provided to any patient in the facility;
- (4) communicate privately and without restriction with any client in accordance with section 144.651;
- (5) inspect records of a long-term care facility, home care service provider, or acute care facility that pertain to the care of the client according to sections 144.335 and 144.651; and
- (6) with the consent of a client or client's legal guardian, have access to review records pertaining to the care of the client according to sections 144.335 and 144.651. If a client cannot consent and has no legal guardian, access to the records is authorized by this section.

A person who denies access to the ombudsman or designee in violation of this subdivision or aids, abets, invites, compels, or coerces another to do so is guilty of a misdemeanor.

Subd. 5. Access to state records. The ombudsman or designee has access to data of a state agency necessary for the

discharge of the ombudsman's duties, including records classified confidential or private under chapter 13, or any other law. The data requested must be related to a specific case and is subject to section 13.03, subdivision 4. If the data concerns an individual, the ombudsman or designee shall first obtain the individual's consent. If the individual cannot consent and has no legal guardian, then access to the data is authorized by this section.

Each state agency responsible for licensing, regulating, and enforcing state and federal laws and regulations concerning long-term care, home care service providers, and acute care facilities shall forward to the ombudsman on a quarterly basis, copies of all correction orders, penalty assessments, and complaint investigation reports, for all long-term care facilities, acute care facilities, and home care service providers.

Subd. 6. Prohibition against discrimination or retaliation. (a) No entity shall take discriminatory, disciplinary, or retaliatory action against an employee or volunteer, or a patient, resident, or guardian or family member of a patient, resident, or guardian for filing in good faith a complaint with or providing information to the ombudsman or designee. A person who violates this subdivision or who aids, abets, invites, compels, or coerces another to do so is guilty of a misdemeanor.

(b) There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of report, is discriminatory, disciplinary, or retaliatory. For the purpose of this clause, the term "adverse action" refers to action taken by the entity involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited to:

- (1) discharge or transfer from a facility;
- (2) termination of service;
- (3) restriction or prohibition of access to the facility or its residents;
- (4) discharge from or termination of employment;
- (5) demotion or reduction in remuneration for services; and
- (6) any restriction of rights set forth in section 144.651 or 144A.44.

History: 1987 c 403 art 2 s 68; 1989 c 282 art 2 s 119

256.9743 REPORTING.

By February 1, 1989, the board on aging shall recommend methods for expanding and funding local ombudsman programs to serve clients receiving in-home services or care in acute care facilities.

History: 1987 c 403 art 2 s 69

256.9744 OFFICE DATA.

Subdivision 1. Classification. Except as provided in this section, data maintained by the office under sections 256.974 to 256.9744 are private data on individuals or nonpublic data as defined in section 13.02, subdivision 9 or 12, and must be maintained in accordance with the requirements of Public Law Number 100-75, United States Code, title 42, section 3027(a)(12)(D).

Subd. 2. Release. Data maintained by the office that does not relate to the identity of a complainant or a resident of a long-term facility may be released at the discretion of the ombudsman responsible for maintaining the data. Data relating to the identity of a complainant or a resident of a long-term facility may be released only with the consent of the complainant or resident or by court order.

History: 1987 c 403 art 7 S 70; 1989 c 282 art 2 s 120

SMALL BUSINESS OMBUDSMAN MINNESOTA STATUTE

116.98 OMBUDSMAN FOR SMALL BUSINESS AIR QUALITY COMPLIANCE ASSISTANCE PROGRAM.

Subdivision 1. **Appointment.** The commissioner shall appoint an ombudsman for small business air quality compliance assistance in the classified service.

Subd. 2. **Duties.** The ombudsman shall provide direct oversight of the small business air quality compliance assistance program. The ombudsman's duties include, but are not limited to:

- (1) conducting independent evaluations of all aspects of the program;
- (2) monitoring, reviewing, and providing comments and recommendations to federal, state, and local air quality authorities on laws and regulations that impact small businesses;
- (3) facilitating and promoting the participation of small businesses in the development of laws and regulations that affect them;
- (4) providing reports to federal, state, and local air quality authorities and the public on the requirements of the Clean Air Act and their impact on small businesses;
- (5) disseminating information concerning proposed air quality regulations, control technologies, and other information to small businesses and other interested parties;
- (6) participating in and sponsoring meetings and conferences concerning air quality laws and regulations with state and local regulatory officials, industry groups, and small business representatives;
- (7) investigating and assisting in the resolution of complaints and disputes from small businesses against state or local air quality authorities;
- (8) periodically reviewing the work and services provided by the program with trade associations and small business representatives;
- (9) operating a toll-free telephone line to provide free, confidential help on individual source problems and grievances;
- (10) referring small businesses to appropriate technical specialists for information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;
- (11) arranging for and assisting in the preparation of program guideline documents to ensure that the language is readily understandable by the lay person;
- (12) establishing cooperative programs with trade associations and small businesses to promote and achieve voluntary compliance with federal and state air quality laws and regulations;
- (13) establishing cooperative programs with federal, state, and local governmental entities and the private sector to assist small businesses in securing sources of funds to comply with federal, state, and local air quality laws and regulations;
- (14) conducting studies to evaluate the impacts of federal and state air quality laws and regulations on the state's economy, local economies, and small businesses;
- (15) serving as a voting member of the small business air quality compliance advisory council established by section 116.99; and

(16) performing the ombudsman's duties in cooperation and coordination with governmental entities and private organizations as appropriate so as to eliminate overlap and duplication to the extent practicable.

Subd. 3. Independence of action. In carrying out the duties imposed by sections 116.96 to 116.99, the ombudsman may act independently of the agency in providing testimony to the legislature, contacting and making periodic reports to federal and state officials as necessary to carry out the duties imposed by sections 116.96 to 116.99, and addressing problems of concern to small businesses.

Subd. 4. Qualifications. The ombudsman must be knowledgeable about federal and state air quality laws and regulations, control technologies, and federal and state legislative and regulatory processes. The ombudsman must be experienced in dealing with both private enterprise and governmental entities, arbitration and negotiation interpretation of laws and regulations, investigation, record keeping, report writing public speaking, and management.

Subd. 5. Office support. The commissioner shall provide the ombudsman with the necessary office space, supplies, equipment, and clerical support to effectively perform the duties imposed by sections 116.96 to 116.99.

History: 1992 c 546 s 8

AGRICULTURE OMBUDSMAN MINNESOTA STATUTE

17.95 DEPARTMENT OF AGRICULTURE OMBUDSMAN

A position is created in the department of agriculture to provide information, investigate complaints arising from this chapter, and provide or facilitate dispute resolutions.

History: 1990 c 517 s 7

TAXPAYER RIGHTS ADVOCATE MINNESOTA STATUTE

270.273 TAXPAYER ASSISTANCE ORDERS; TAXPAYER'S RIGHTS ADVOCATE.

Subdivision 1. **Authority to issue.** On application filed by a taxpayer with the department of revenue taxpayer's rights advocate, in the form, manner, and in the time prescribed by the commissioner, and after thorough investigation, the taxpayer's rights advocate may issue a taxpayer assistance order if, in the determination of the taxpayer's rights advocate, the manner in which the state tax laws are being administered is creating or will create an unjust and inequitable result for the taxpayer.

Subd. 2. **Terms of a taxpayer assistance order.** A taxpayer assistance order may require the department to release property of the taxpayer levied on, cease any action, or refrain from taking any action to enforce the state tax laws against the taxpayer, until the issue or issues giving rise to the order have been resolved.

Subd. 3. **Authority to modify or rescind.** A taxpayer assistance order issued by the taxpayer's rights advocate under this section may be modified or rescinded by the commissioner.

OMBUDSMAN ROUNDTABLE ORGANIZATION

DEFINITION OF A GOVERNMENTAL OMBUDSMAN IN MINNESOTA

An official intermediary between citizen and government to counteract the delay, injustice and impersonality of bureaucracy. Powers of an Ombudsman include the power to receive and investigate complaints, the power to make findings and recommendations, the power to publish reports on those findings and recommendations.

The Ombudsman Roundtable
1994

OTHER COMMON DESCRIPTIONS

- A fair and impartial fact finder
- Watchdog of government
- A balancer of the scales of power
- A quality assurance mechanism for government
- A citizens representative
- A conduit for citizen access to government
- An advocate for fairness**
- Low cost alternative to litigation
- A poor man's court
- An informal dispute resolution in a fair, impartial and external forum
- An agent for change
- A checks and balance for the system

WHAT AN OMBUDSMAN IS NOT

- Not a regulatory agency
- Not only an information and referral service
- Not a patient relations representative
- Not a crisis intervention line
- Not a customer service representative
- Not a defender of the government**

****** *An ombudsman function requires a fair and impartial investigation of facts and then based on the outcome of that investigation the ombudsman may proceed to do a number of different actions such as advocate, mediate, request policy change or reinterpretation or if the outcome of the investigation determines that the citizen's complaint or concern is not accurate, educate the citizen to better able them to advocate for themselves in the future or to better understand the system they interact with. If the ombudsman is an advocate for anything, it is an advocate for fairness and equal treatment.*

**STATE OF MINNESOTA
OMBUDSMAN'S ROUNDTABLE
ESTABLISHED JANUARY 1994**

PURPOSE:

- To provide a communication exchange between the various state ombudsman in Minnesota to enhance services to Minnesota's citizens while minimizing duplication of effort.
- To share resources and develop common training
- To promote the common functions of ombudsmans.
- To provide peer support to ombudsmans.
- To provide education for the government officials and the public on the role and function of an ombudsman.

PARTICIPATION:

- Any person who heads a state agency or a leader of a state agency division or section of a division who carries the title of Ombudsman and who has similar ombudsman like authority.

MEETINGS:

- Meeting dates and times shall be set by a consensus of the ombudsmans on an as needed basis.

ORGANIZATIONAL STRUCTURE:

- Each ombudsman agency shall have an equal place at the roundtable regardless of size of the agency.
- Decisions and group positions shall be established by consensus.

- The group shall appoint a chair and co-chair for purposes of organizing the meetings and preparing agendas. The chair position shall be rotated on an annual basis consistent with the fiscal year.

ITEMS APPROPRIATE FOR DISCUSSION:

- Reviewing and promotion of common functions of an ombudsman as per commonly held national standards.
- Promoting the highest standards of ombudsmanship.
- Exchange of information and common training in areas that affect all ombudsmans.
- Collaboration and sharing technical expertise on individual cases that affect clients to insure that the client has the best available information and service while preventing duplication of state resources.
- To review and comment on legislation that collectively affects ombudsmans or the clients they serve.
- Any other matter that the Roundtable deems appropriate for discussion.

OMBUDSMAN ROUNDTABLE MEMBERS

NAME

ADDRESS/PHONE NUMBER

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POSITION IS VACANT
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